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(Original Signature of Member)

108TH CONGRESS
2D SESSION

H. R. _____

To prohibit the transfer of personal information to any person outside the
United States, without notice and consent, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MARKEY introduced the following bill; which was referred to the
Committee on _____

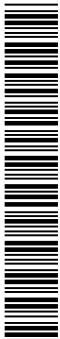
A BILL

To prohibit the transfer of personal information to any per-
son outside the United States, without notice and con-
sent, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Personal Data
5 Offshoring Protection Act of 2004”.



1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions apply:

3 (1) BUSINESS ENTERPRISE.—The term “busi-
4 ness enterprise” means any organization, associa-
5 tion, or venture established to make a profit, or any
6 private, nonprofit organization that collects or re-
7 tains personally identifiable information.

8 (2) COUNTRY WITH ADEQUATE PRIVACY PRO-
9 TECTION.—The term “country with adequate pri-
10 vacy protection” means a country that has been cer-
11 tified by the Federal Trade Commission as having a
12 legal system that provides adequate privacy protec-
13 tion for personally identifiable information.

14 (4) PERSONALLY IDENTIFIABLE INFORMA-
15 TION.—The term “personally identifiable informa-
16 tion” includes information such as—

- 17 (A) name;
18 (B) postal address;
19 (C) financial information;
20 (D) medical records;
21 (E) date of birth;
22 (F) phone number;
23 (G) e-mail address;
24 (H) social security number;
25 (I) mother’s maiden name;
26 (J) password;



1 (K) state identification information;
2 (L) driver's license number;
3 (M) personal tax information; and
4 (N) any consumer transactional or experi-
5 ential information relating to the person.

6 (5) TRANSMIT.—The term “transmit” or
7 “transmission” means the use of any instrumentality
8 of interstate commerce, including the mails or any
9 electronic means, to transfer information or to pro-
10 vide access to such information via the Internet or
11 any comparable telecommunications system.

12 **SEC. 3. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**
13 **FORMATION FROM UNAUTHORIZED TRANS-**
14 **MISSION.**

15 (a) IN GENERAL.—A business enterprise may trans-
16 mit personally identifiable information regarding a citizen
17 of the United States to any foreign affiliate or subcon-
18 tractor located in a country that is a country with ade-
19 quate privacy protection, provided that the citizen has
20 been provided prior notice that such information may be
21 transmitted to such a foreign affiliate or subcontractor
22 and has not objected to such transmission.

23 (b) “OPT-IN” CONSENT REQUIRED FOR COUNTRIES
24 WITHOUT ADEQUATE PRIVACY PROTECTION.—A business
25 enterprise may not transmit personally identifiable infor-



1 mation regarding a citizen of the United States to any
2 foreign affiliate or subcontractor located in a country that
3 is a country without adequate privacy protection unless—

4 (1) the business enterprise discloses to the cit-
5 izen that the country to which the information will
6 be transmitted does not have adequate privacy pro-
7 tection;

8 (2) the business enterprise obtains consent from
9 the citizen, before a consumer relationship is estab-
10 lished or before the effective date of this Act, to
11 transmit such information to such foreign affiliate or
12 subcontractor; and

13 (3) the consent referred to in paragraph (2) is
14 renewed by the citizen within 1 year before such in-
15 formation is transmitted.

16 (c) PROHIBITION ON REFUSAL TO PROVIDE SERV-
17 ICES.—A business enterprise shall not deny the provision
18 of any good or service to, nor change the terms of or
19 refuse to enter into a business relationship with any per-
20 son based upon that person's exercise of the consent rights
21 provided for in this Act or in any other applicable law.

22 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
23 **SION.**

24 (a) UNFAIR AND DECEPTIVE ACT OR PRACTICE.—
25 A violation of this Act shall be treated as a violation of



1 a rule defining an unfair or deceptive act or practice pre-
2 scribed under section 18(a)(1)(B) of the Federal Trade
3 Commission Act (15 U.S.C. 57a(a)(1)(B)).

4 (b) ENFORCEMENT AUTHORITY.—The Federal
5 Trade Commission shall enforce this Act in the same man-
6 ner, by the same means, and with the same jurisdiction,
7 powers, and duties as though all applicable terms and pro-
8 visions of the Federal Trade Commission Act (15 U.S.C.
9 41 et seq.) were incorporated into and made a part of this
10 Act.

11 **SEC. 5. CIVIL REMEDIES.**

12 (a) PRIVATE RIGHT OF ACTION.—A person or entity
13 may, if otherwise permitted by the laws or rules of court
14 of a State, bring in an appropriate court of that State—

15 (1) an action based on a violation of this Act
16 or the regulations prescribed pursuant to this Act to
17 enjoin such violation;

18 (2) an action to recover for actual monetary
19 loss from such a violation, or to receive \$10,000 in
20 damages for each such violation, whichever is great-
21 er, or

22 (3) both such actions.

23 If the court finds that the defendant willfully or knowingly
24 violated this subsection or the regulations prescribed
25 under this subsection, the court may, in its discretion, in-



1 crease the amount of the award to an amount equal to
2 not more than 3 times the amount available under para-
3 graph (2).

4 (b) ACTIONS BY STATES.—

5 (1) AUTHORITY OF STATES.—Whenever the at-
6 torney general of a State, or an official or agency
7 designated by a State, has reason to believe that any
8 person has engaged or is engaging in a violation of
9 this Act or the regulations prescribed pursuant to
10 this Act, the State may bring a civil action on behalf
11 of its residents to enjoin such violation, an action to
12 recover for actual monetary loss or receive \$10,000
13 in damages for each violation, or both such actions.
14 If the court finds the defendant willfully or know-
15 ingly violated this Act or regulations prescribed pur-
16 suant to this Act, the court may, in its discretion,
17 increase the amount of the award to an amount
18 equal to not more than 3 times the amount available
19 under the preceding sentence.

20 (2) EXCLUSIVE JURISDICTION OF FEDERAL
21 COURTS.—The district courts of the United States,
22 the United States courts of any territory, and the
23 District Court of the United States for the District
24 of Columbia shall have exclusive jurisdiction over all
25 civil actions brought under this subsection. Upon



1 proper application, such courts shall also have juris-
2 diction to issue writs of mandamus, or orders afford-
3 ing like relief, commanding the defendant to comply
4 with the provisions of this Act or regulations pre-
5 scribed pursuant to this Act, including the require-
6 ment that the defendant take such action as is nec-
7 essary to remove the danger of such violation. Upon
8 a proper showing, a permanent or temporary injunc-
9 tion or restraining order shall be granted without
10 bond.

11 (3) NOTICE TO AN INTERVENTION OF FEDERAL
12 TRADE COMMISSION.—The State bringing a civil ac-
13 tion under this section shall serve prior written no-
14 tice of any such civil action upon the Federal Trade
15 Commission and provide the Commission with a
16 copy of its complaint, except in any case where such
17 prior notice is not feasible, in which case the State
18 shall serve such notice immediately upon instituting
19 such action. The Commission shall have the right—

20 (A) to intervene in the action;

21 (B) upon so intervening, to be heard on all
22 matters arising therein; and

23 (C) to file petitions for appeal.

24 (4) VENUE; SERVICE OF PROCESS.—Any civil
25 action brought under this subsection in a district

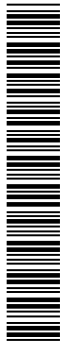


1 court of the United States may be brought in the
2 district wherein the defendant is found or is an in-
3 habitant or transacts business or wherein the viola-
4 tion occurred or is occurring, and process in such
5 cases may be served in any district in which the de-
6 fendant is an inhabitant or where the defendant may
7 be found.

8 (5) INVESTIGATORY POWERS.—For purposes of
9 bringing any civil action under this subsection, noth-
10 ing in this Act shall prevent the attorney general of
11 a State, or an official or agency designated by a
12 State, from exercising the powers conferred on the
13 attorney general or such official by the laws of such
14 State to conduct investigations or to administer
15 oaths or affirmations or to compel the attendance of
16 witnesses or the production of documentary and
17 other evidence.

18 (6) EFFECT ON STATE COURT PROCEEDINGS.—
19 Nothing contained in this section shall be construed
20 to prohibit an authorized State official from pro-
21 ceeding in State court on the basis of an alleged vio-
22 lation of any general civil or criminal statute of such
23 State.

24 (7) LIMITATION.—Whenever the Federal Trade
25 Commission has instituted a civil action for violation



1 of this Act or the regulations prescribed pursuant to
2 this Act, no State may, during the pendency of such
3 action instituted by the Commission, subsequently
4 institute a civil action against any defendant named
5 in the Commission's complaint for any violation as
6 alleged in the Commission's complaint.

7 **SEC. 6. CERTIFICATION OF COUNTRIES WITH ADEQUATE**
8 **PRIVACY PROTECTION.**

9 (a) IN GENERAL.—Not later than 6 months after the
10 date of enactment of this Act, the Federal Trade Commis-
11 sion, after providing notice and opportunity for public
12 comment, shall—

13 (1) certify those countries that have legal sys-
14 tems that provide adequate privacy protection for
15 personally identifiable information; and

16 (2) make the list of countries certified under
17 paragraph (1) available to the general public.

18 (b) CERTIFICATION CRITERIA.—

19 (1) IN GENERAL.—In determining whether a
20 country should be certified under this section, the
21 Federal Trade Commission shall consider the ade-
22 quacy of the country's infrastructure for detecting,
23 evaluating, and responding to privacy violations.

24 (2) PRESUMPTION.—The Commission shall pre-
25 sume that a country's privacy protections are inad-



1 equate if they are any less protective of personally
2 identifiable information than those afforded under
3 Federal law or under the laws of any State, or if the
4 Commission determines that such country's laws are
5 not adequately enforced.

6 (c) EUROPEAN UNION DATA PROTECTION DIREC-
7 TIVE.—A country that has comprehensive privacy laws
8 that meet the requirements of the European Union Data
9 Protection Directive shall be certified under this section
10 unless the Federal Trade Commission determines that
11 such laws are not commonly enforced within such country.

12 **SEC. 7. EFFECTIVE DATE.**

13 Section 6 of this Act shall take effect on the date
14 of enactment of this Act. Sections 2 through 5 of this Act
15 shall take effect 60 days after the the completion of the
16 certification required by section 6.

